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COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-ninth session
Item 11 (b) (ii) of the provisional agenda

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN OR MAY BE CONCERNED

REVIEW OF ISSUES NOT PREVIOUSLY THE SUBJECT OF STUDIES BUT WHICH THE SUB-COMMISSION HAS DECIDED TO EXAMINE

INTERNATIONAL PEACE AND SECURITY AS AN ESSENTIAL CONDITION FOR THE ENJOYMENT OF HUMAN RIGHTS, ABOVE ALL THE RIGHT TO LIFE

Report by the Secretary-General submitted pursuant to Sub-Commission resolution 1996/16

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Introduction

1. At its forty-eighth session, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in its resolution 1996/16 of 29 August 1996, concerned at the alleged use of weapons of mass or indiscriminate destruction both against members of the armed forces and against civilian populations, resulting in death, misery and disability, and concerned also at repeated reports on the long-term consequences of the use of such weapons upon human life and health and upon the environment, urged all States to be guided in their national policies by the need to curb the production and the spread of weapons of mass destruction or with indiscriminate effect, in particular nuclear weapons, chemical weapons, fuel-air bombs, napalm, cluster bombs, biological weaponry and weaponry containing depleted uranium.

2. The Sub-Commission requested the Secretary-General:

(a) To collect information from Governments, the competent United Nations bodies and agencies and non-governmental organizations on the use of nuclear weapons, chemical weapons, fuel-air bombs, napalm, cluster bombs, biological weaponry and weaponry containing depleted uranium, on their consequential and cumulative effects, and on the danger they represent to life, physical security and other human rights;

(b) To submit a report on the information gathered to the Sub-Commission at its forty-ninth session, together with any recommendations and views which he may have received on effective ways and means of eliminating such weapons.

3. Pursuant to that resolution, the Secretary-General, by a communication dated 22 January 1997, invited States and interested intergovernmental and non-governmental organizations to submit their contributions to the High Commissioner/Centre for Human Rights by 8 May 1997.

4. By 30 May 1997, substantive replies had been received from the Governments of Croatia and Nigeria.

5. A reply was also received from the Centre for Disarmament Affairs of the United Nations.

6. International Educational Development, Inc. (IEDI) and the International Indian Treaty Council (IITC) also sent replies. The former also attached material and documents collected by the Laka Foundation and a number of other organizations and researchers.

7. The present report is submitted to the Sub-Commission in pursuance of resolution 1996/16.

I. COMMENTS PROVIDED BY GOVERNMENTS

Croatia

[21 May 1997]
[Original: English]

8. In respect of the question of the use, possession and deployment of nuclear weapons, chemical weapons, fuel-air bombs, napalm bombs, cluster bombs and biological weapons the Republic of Croatia shares the views of the Sub-Commission on Prevention of Discrimination and Protection of Minorities as expressed in resolution 1996/16, particularly in respect to the perils which arise from the deployment, possession and use of such weaponry for the full enjoyment of human rights and freedoms of all individuals and groups, especially the right to life and the right to security of person.

9. Additionally, the Republic of Croatia would like to stress that, besides the prohibition of the use of the chemical weapons, napalm bombs, cluster bombs and biological weaponry existing under contemporary international humanitarian law, and the prohibition of the use of nuclear weapons in certain situations prohibited under international law (Geneva Conventions of 1949 and Protocol I of 1977), there is a need to study the impact of the deployment and use of the respective weaponry on the full enjoyment of human rights and freedoms, in particular the right to life, and the right to security of person.

10. In order to enhance the process of the reduction and limitation of arms at the international level, the Republic of Croatia fully supports the disarmament process at both the global and regional levels. Moreover, the Republic of Croatia is not in possession of any of the weapons mentioned in resolution 1996/16.

Nigeria

[3 February 1997]
[Original: English]

11. The use of nuclear weapons, chemical weapons, fuel-air bombs, napalm, cluster bombs, biological weaponry and weaponry containing depleted uranium, like the dumping of other toxic and dangerous chemicals and wastes in the developing countries, violates the rights to life, health, physical security and other human rights, such as economic, social and cultural rights and the right to development.

12. In the light of the above, the Federal Government of Nigeria has continued to encourage the international community to ban entirely the production and use of the above-mentioned weapons, in conformity with international humanitarian law. Likewise, the Government of Nigeria has legislated against all transboundary trade in toxic and hazardous wastes. However, Nigeria is still faced with the threats of wastes illegally dumped in the country. Most of these wastes are misleadingly labelled as raw materials for certain industries, vegetable oil and artificial resin.

II. COMMENTS PROVIDED BY UNITED NATIONS BODIES

Centre for Disarmament Affairs

[22 April 1997]
[Original: English]

13. The Centre enclosed information regarding treaties that constitute legal barriers to the development, possession, use or transfer, as the case may be, of chemical, biological and nuclear weapons; and an excerpt from the recent advisory opinion of the International Court of Justice concerning the legality of the use or threat of use of nuclear weapons (see annex).

14. While the Secretary-General has, in the past, conducted investigations of alleged use of chemical weapons and of alleged violations by some States parties of the Biological Weapons Convention, the Organization is not in a position to make a definitive judgement on these reports of alleged use. The attached information sheet lists the document symbols of reports of the Secretary-General regarding such investigations (see annex).

15. With regard to the immediate and cumulative effects of the weapons mentioned in resolution 1996/16 and the danger they represent to life, physical security and other human rights, the Centre referred to the extensive and well-documented research carried out by the World Health Organization. Its studies trace several years of negative effects of the use or accidental release of chemical and biological (bacteriological) substances for public health, as well as for the environment.

16. Attention was also drawn to the fact that the Secretary-General is strenuously supporting efforts to combat the suffering caused by conventional arms, among them anti-personnel landmines, that are being used in the conflicts that the United Nations is dealing with. For this reason, the Convention on Certain Conventional Weapons with its four Protocols, including its recently amended protocol on landmines and a new protocol on blinding laser weapons, figures on the information sheet. In addition, two very early agreements banning the use in war of certain projectiles and expanding bullets, respectively, are also noted.

III. COMMENTS PROVIDED BY NON-GOVERNMENTAL ORGANIZATIONS

International Educational Development, Inc.

[7 April and 21 May 1997]
[Original: English]

17. International Educational Development, Inc. points out that the humanitarian law maxim relating to military operations also applies to weaponry: any weapon necessary to defeat the enemy forces is legal unless specifically prohibited or limited. 1/ Prohibitions or limitations may be found in any source of international law: treaties, customary law, principles of law of civilized nations, decisions of tribunals, expert opinion, the laws

of humanity and the dictates of the public conscience. Prohibitions on certain weapons may also be included in agreements between the parties to a conflict.

18. The first widely-supported declarations prohibiting weaponry date from the time of the first Hague Conference in 1899 and prohibit projectiles launched from balloons (Declaration IV,1 of 1899), projectiles diffusing asphyxiating gases (Declaration IV,2) and "dum-dum" bullets (Declaration IV,3). These declarations followed a declaration made by 19 States in 1868: the St. Petersburg Declaration Renouncing the Use, in Time of War, of Explosive Projectiles under 400 Grammes Weight. The main issue in these declarations was to prohibit weaponry causing "needless" suffering. Thus, from the beginning of concern over weaponry, the relationship between military necessity and considerations of humanity was made.

19. Subsequent treaties and declarations have focused on prohibitions against more modern weapons: napalm, certain chemical and biological weapons 2/ and against modification of the environment for hostile purposes. 3/ Action at the General Assembly on weapons includes the Declaration on the Prohibition on the Use of Nuclear and Thermo-Nuclear Weapons, 4/ and the Question of Chemical and Bacteriological (Biological) Weapons. 5/ In 1973 the Secretary-General issued Respect for Human Rights in Armed Conflict: Existing Rules of International Law Concerning the Prohibition or Restriction of Use of Specific Weapons (A/9215 (2 vols.)).

20. In 1983, the General Assembly, in its resolution 38/75 of 15 December, condemned nuclear war in the strongest possible terms ("resolutely, unconditionally and for all times") as "contrary to human conscience and reason, as the most monstrous crime against peoples, and as a violation of the foremost human right, the right to life". The resolution also directed the international community to eliminate all threat of nuclear war and nuclear weaponry.

21. In 1996, the International Court of Justice, in its case on Legality of the Threat or Use of Nuclear Weapons unanimously ruled that the use of nuclear weapons was subject to all rules of humanitarian law. 6/ The Court cites, inter alia, the Martens Clause "as an affirmation that the principles and rules of humanitarian law apply to nuclear weapons" (para. 87). Key provisions of humanitarian law raised by this opinion include the prohibition on killing or targeting civilians (para. 93), the prohibition on injuring or damaging non-belligerent States (neutral parties) and their people (para. 78), the prohibition of weapons causing undue suffering (paras. 78, 92 and 95) and the prohibition on endangering or damaging the environment (paras. 32-33, 35). In this light, war-time use of nuclear weapons constitutes per se a violation of humanitarian law. The Court also ruled that nations are under a duty to negotiate a total ban on further development and the elimination of existing stockpiles of nuclear weapons. Finally, the Court invoked the principle of self-determination when it found that the threat of use of nuclear weapons was illegal if the goal of their use was to force a country to change its leadership or economic policy. The ruling reinforces prohibitions against non-nuclear weapons of the type referred to in Sub-Commission resolution 1996/16 to the degree that these weapons also are subject to the basic tenets of humanitarian law.

22. On 29 April 1997, the Convention Outlawing Chemical Weapons took effect following the ratification of it by 65 countries. The Convention creates the Organization for the Prohibition of Chemical Weapons.

23. The use of most weapons listed in resolution 1996/16 would violate the rules of humanitarian law. Nuclear weapons, chemical weapons, biological weaponry and weaponry containing depleted uranium (hereinafter referred to as DU) are all fundamentally indiscriminate and uncontainable, have severe residual effects long after the war is over, cause undue suffering and harm the environment. For example, DU may cause deaths and serious illnesses, disabilities and birth defects long after its war-time use in weapons. It remains in the soil, water supply and atmosphere for generations, rendering water supplies and agricultural land unusable. According to United States Government documents, short-term effects of high doses of DU can result in death, while long-term effects of low doses have been implicated in cancer. 7/

24. Those listed weapons that have a prolonged generational effect, causing birth defects, illnesses and disease for more than one generation, are particularly in violation of human rights. The use of these weapons could constitute an act of genocide. Fuel-air bombs and cluster bombs are also difficult to contain and therefore pose an undue (grave) risk that their use will violate humanitarian norms. Cluster bombs, in particular, may case undue suffering of military personnel. In this light, use of such weapons provides a strong inference that the user intended to violate the laws and customs of war, if there is undue suffering of military personnel, if there are undue civilian casualties or other violations from their use.

25. It is also patently clear that all the listed weapons except fuel-air and cluster bombs necessarily violate human rights, especially the rights to life, health, food, shelter and work. The right to food in human rights law (art. 25 of the Universal Declaration of Human Rights; art. 11 of the International Covenant on Economic, Social and Cultural Rights) is closely linked to the right to life as an aspect of the right to subsistence. Many of the listed weapons destroy land that could otherwise be used for agricultural purposes. In the case of the use of weapons containing DU, the land will never be useful for agricultural use - the half-life of DU is 4.5 billion years. The war-time use of depleted uranium also is likely to contaminate food stored in facilities that are not nuclear-proof - and few such facilities are. Bacteriological and chemical weapons can also affect foodstuffs and agricultural lands for many years and, in the case of bacteriological and biological weapons, could result in mutant plant forms with serious effects on human, animal and vegetable life.

26. The right to safe drinking water, which arises from the right to food, the right to life and the right to health, is likely to be even more seriously violated. Again using DU as an example, contaminants from DU weapons can enter the water supply (groundwater, lakes and streams, reservoirs, etc.) far away from the location where the weapons were actually used in combat. Given prevailing winds and rainfall patterns, it is scientifically impossible to limit DU effects to even one country, much less to the legitimate field of battle.

27. Many jobs and forms of employment could be instantly destroyed, with a severe effect on the right to work. For example, countries facing massive short- and long-term lay-offs in agricultural jobs due to contamination or other destruction of agricultural lands may be unable to retool with sufficient speed to prevent serious economic and social consequences. Countries not participating in armed hostilities may also be affected, if, for example, their agricultural lands were affected by depleted uranium, chemical or biological weapons.

28. The use or threat of use of weapons that per se violate humanitarian law, such as those listed in resolution 1996/16, can be regarded as torture under the international definition of torture set out in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The use in the definition of the words "any act" means that use of weapons could be an act of torture to the degree that the rest of the definition is met. Legal weapons used in legal military operations against legal military targets would not meet the rest of the test for torture: humanitarian law permits the use of weapons and military operations that are not specifically prohibited and would therefore be subject to the "lawful sanctions" exclusion in the definition. However, illegal weapons do not have that protection, and their war-time use easily meets the rest of the definition of torture: their use causes severe pain and suffering, both physical and mental; their use is intentional; they are used to unduly coerce the enemy or the civilian population into surrender, submission or other state favourable to the user of the weapons; and their use is under the direct order of public officials.

29. The most obvious risk of violation of human rights by the development, production and storage of nuclear (including depleted uranium), biological, bacteriological or chemical weapons is because of the almost certain contamination of people, animals, plants, ground, air and water. At this point there is insufficient technology to prevent eventual contamination. Some States have attempted to dump the contaminants from these weapons and their development on other countries, without fully disclosing the contents of containers or the hazards at stake.

30. Less obvious are the implications for economic and social rights when countries spend millions of dollars on the development, production and stockpiling of illegal weapons-monies that could be used for economic and social advancement. For example, a study prepared by the New Mexico Institute of Mining and Technology indicates a cost of $248,000 just to ship from New Mexico to nearby Nevada 498 fifty-gallon drums of surface soil contaminated with DU. 8/ Another study indicated that it costs the United States nearly $70 million/day to maintain nuclear warfare capability. 9/

31. Finally, weapons development related to the right to peace and to the right to the use of science and technology for the benefit of humankind. 10/ The United Nations action in this area reflects the universally accepted understanding that the right to peace can only be realized with an end to the arms race and only when science and technology are directed away from newer and deadlier weaponry. The development or threat of development of weaponry of the type listed in resolution 1996/16 fundamentally endangers the right to

peace, in particular because as one State develops a deadlier weapon, other States think they must also to avoid being coerced or threatened by the State having these weapons. 11/ Focusing technological advance on weapons whose use would certainly violate humanitarian and human rights law channels substantial amounts of badly needed resources away from solving the huge problems facing the world community.

32. Because many of the rights related to weaponry are considered jus cogens and are clearly in effect during both war and peace, the usual limitation of humanitarian law protections to the enemy becomes inoperable. Thus a State could be liable for injuries of its own citizens during war due to its violations of both human rights and humanitarian law related to illegal weaponry. Some States attempt to refuse claims arising from "acts of war". Such refusal is untenable when the "act of war" is a violation of the laws and customs of war.

33. One attribute of the principle of jus cogens is that the international community must work to repress violations under the legal principle of erga omnes. The principle of erga omnes has been raised in the context of weapons and weapon testing. 12/ In a recent statement, the Inter-American Commission on Human Rights of the Organization of American States, in its Press Communiqué No. 13/93 of 25 May 1993, declared that the obligation to respect and guarantee civil and political rights is an obligation erga omnes. This statement reinforces the erga omnes duty to protect the civilian population in time of war because of the inherent link to the right to life and personal security as a cornerstone of civil and political rights. 13/ Because of the status of the listed weapons, the international community must condemn all war-time use of them and must work to conclude relevant treaties to effectively eliminate them.

34. The jus cogens and erga omnes nature of the prohibitions of the listed weapons also invokes the duty to warn and inform the international community of the use of these weapons that is occurring or has occurred. The duty to warn and inform was clearly established by the International Court of Justice in the Corfu Channel case, in which the Court declared the failure to warn of sea mines in an area with an international right of sea passage "violates certain and well recognized principles, namely: elementary considerations of humanity". 14/ Applying this rule to the listed weapons, a State using, for example, weapons containing DU would be under an affirmative duty to disclose that fact with all particulars, such as quantities, location, and duration of use. Such a State would also be under an affirmative duty to remove all hazardous weapons and residue, to repair all damage done by such weaponry and to minimize, to the extent possible, all negative effects of these prohibited weapons.

35. Victims of weapons that violate humanitarian and human rights law have a right to compensation deriving from both humanitarian and human rights law. The first codified statement in humanitarian law of the customary international law principle of compensation of wrongs is in article III of The Hague Convention of 1907, which provides that a party which violates its provisions must pay compensation and that each party is liable for all acts committed by persons forming part of its armed forces.

36. The clear right to compensation under The Hague Convention reflects the right to compensation as it had been long recognized as either jus cogens or a fundamental principle of law. Fundamental principles of law are customary international law norms relating to the functioning of legal systems. Because these customary norms relating to the functioning of legal systems are considered mandatory or absolute, describing them as principles of law is the same as describing them as jus cogens. Whether described as jus cogens or a fundamental principle of law, the right to compensation as a principle of customary international law is binding on all States.

37. Following the Second World War the international community set up international and regional legal regimes for human rights in which the right to compensation and mechanisms therefor are a prominent feature. 15/ A key component of the right to compensation is the duty of all States to provide a procedure by which claims can be brought. The absence of such a procedure, however, does not negate the right, and if a State refuses to provide a forum, the international community as a whole or another State may provide such a forum.

38. In the light of existing rules of compensation, all damage done to persons and property by illegal weapons used in war is actionable in a compensation claim. Any State using the listed weapons in war must provide appropriate compensation to victims. It is legally unthinkable that a person could be a victim of a war crime and not be allowed to exercise the right to one of the most basic aspects of law - the right to compensation. Persons also have a right to seek compensation for injury or damage caused by the development, production or storage of such weapons.

39. The most effective strategy for elimination of these weapons is enforcement of existing humanitarian and human rights standards. Resolute enforcement of the humanitarian and human rights norms relating to the use of the weapons listed in resolution 1996/16, especially with international condemnation of violations and insistence upon compensation for victims, will go a long way towards elimination of the weapons. The international community must make it prohibitively expensive for States to use such weapons - expensive in monetary terms and expensive in political terms.

Recommendations

40. International Educational Development, Inc. is of the view that dissemination of information about these weapons is important for generating the worldwide will to enforce existing standards and may lead to agreements to condemn and/or eliminate specific weapons. One of the great dilemmas in weaponry and weapons development is the secrecy with which such issues are treated by Governments. Most Governments include information concerning weapons among the highest levels of classified information, so that even legislators of a particular country may be unable to obtain sufficient information. Therefore, any international, regional or national endeavours to require public disclosure and review of weapons and weapon development should be actively pursued.

41. International Educational Development, Inc. suggests that the Sub-Commission might undertake the following measures:

It could adopt a resolution identifying use of the listed weapons as violations of humanitarian and human rights law and the development, production and storage of these weapons as causing grave human rights violations and concerns. Such a resolution could also reinforce the right of victims of such weaponry to compensation;

It could renew its request to the Secretary-General to allow for further evaluation and analysis, and could ask for information on recent armed conflicts where there have been allegations of the use of the listed weapons;

It could request further study of any number of issues related to weaponry that have had inadequate recent attention. Suggested topics include but are not limited to: (i) the issue of State secrecy and the public right to know; (ii) the right to health; (iii) intergenerational rights; (iv) transboundary violations; (v) State coercive acts and human rights; (vi) the substantive evolution of genocide, ethnocide and ecocide; (vii) the right to subsistence and the right to life; and (viii) the need to establish a permanent claims tribunal or procedure by which victims of violations may seek and receive compensation;

It could request the Commission on Human Rights to condemn the use, development, production and storage of the listed weapons and to urge the General Assembly to adopt a similar condemnation;

It could request the Commission on Human Rights to consider the appointment of a Special Rapporteur on armed conflict with a mandate, inter alia, to report and investigate allegations of the use of the listed weapons in current wars.

International Indian Treaty Council

[15 May 1997]
[Original: English]

42. IITC strongly believes that the right to life includes the right to an environment free from nuclear and other grossly dangerous contamination, and positive measures on the part of States (especially the States responsible for such contamination) to make it so.

43. IITC also believes that all nuclear activity, whether it be mining for the production of nuclear weapons or so-called "peaceful uses of nuclear energy", is firmly within the ambit of the Sub-Commission resolution. There are those in the international community who maintain that there is no such thing as "peaceful uses" of nuclear energy, as the production of such energy also produces plutonium, routinely used in the production of nuclear weapons. Further, human nuclear experimentation conducted by a State's military cannot be considered to be outside the scope of the Sub-Commission resolution, as such experimentation cannot be for any other purpose than to further the military use of nuclear materials.

44. IITC has conducted an assessment of the problem of nuclear contamination and the human rights of indigenous peoples. Indigenous peoples have been poisoned by nuclear contamination since the inception of the so-called nuclear age, beginning with the Pueblo and Shoshone Peoples of New Mexico and Nevada, poisoned by 926 United States, and later joint United States/United Kingdom nuclear weapons tests, begun in 1944 at White Sands, New Mexico. IITC has found that the problem of nuclear contaminants produced as a result of nuclear weapons production, development and testing, is pervasive and serious throughout many indigenous communities in North America and the Pacific.

45. IITC determined the following means of contamination of indigenous peoples and communities:

Nuclear bomb explosions;
Uranium mining and milling operations;
Nuclear reactors;
Storage of nuclear waste;
Dumping of nuclear waste;
Radioactive human experimentation and testing.

46. With regard to nuclear weapons testing as a threat to indigenous peoples, IITC cites Tahiti, Polynesia, in particular, as an indigenous community poisoned by such testing. The peoples of Tahiti have suffered nuclear poisoning from radioactive fallout from tests, from eating contaminated fish (marine contamination has an enormous impact on a society where seafood is the main source of food) and from exposure to radioactivity while employed at Mururoa. Workers so employed bring radioactivity to their homes and families on other islands. Some long-term health problems for future generations include cancers, miscarriages, premature births, neurological diseases in newborn babies, deformed children, deaths of babies and children, and leukaemia. There are also relocation-related and poverty-related illnesses and illnesses of the Earth, such as the sinking and cracking of atolls, tidal waves and other environmental changes.

47. The peoples of the Marshall Islands also are experiencing many of the consequences of such tests, including the loss of traditional islands.

48. IITC also cites the United States Government's use of indigenous peoples in Alaska as "guinea pigs", in human radiation testing, in tests called "Project Chariot", whereby large quantities of nuclear waste from the Nevada, Shoshone territory, atomic bomb test site were buried near the indigenous Inupiat village of Point Hope, Alaska, in order to test the dispersal of radioactivity in an Arctic climate directly on indigenous peoples. It was only in 1992, after increasing rates of rare cancers were detected among villagers of Point Hope, that the United States Government admitted that the radioactive waste was still buried there.

49. On 8 September 1996, the Indigenous Anti-Nuclear Summit Declaration was adopted at a gathering of indigenous peoples, their representatives and organizations, at Albuquerque, New Mexico, United States of America. In the Nuclear Summit Declaration, indigenous peoples declared their "unanimous and total opposition to the nuclear power and weapons chain and its devastating impacts and deadly effects on our communities". The Declaration also gives

examples of the continuous nuclear contamination of indigenous communities, lands and territories, and calls for an end "to these crimes against our peoples, communities and future generations by the nuclear industry, their stockholders, and nuclear Governments, including the United States, Japan, France, Canada and China".

Recommendations

50. For many of the world's indigenous peoples, the issues raised by the Sub-Commission resolution are matters of extreme urgency and survival. They therefore put the following recommendations to the High Commissioner for Human Rights for consideration:

(a) First and foremost, indigenous lands and territories must be declared nuclear-free zones, in matters not only of the testing of nuclear devices and processes, but in mining and nuclear milling and processing and all other nuclear activity.

(b) The principle of the polluter pays must be implemented immediately with regard to all contaminated lands and territories, and those responsible must in good faith begin the long and expensive process to restore the Mother Earth.

51. IITC would endorse the recommendations of the United Nations Special Rapporteur, Mrs. Ksentini, generally, and would re-state some of her key recommendations for the purpose of this response:

(a) A coordinating centre should be set up within the Centre for Human Rights with regard to nuclear contamination;

(b) A special rapporteur of the Commission on Human Rights should be appointed on the issue of nuclear contamination and its effects on human rights, particularly the right to life.

Notes

1/ Pictet's explanation that humanitarian law seeks to balance military necessity with the requirements of humanity applies equally to weaponry. See Jean Pictet, The Principles of Humanitarian Law (ICRC, 1966).

2/ See, esp. Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare, Adopted 17 June 1935, 94 League of Nations Treaty Series 65, reprinted in International Committee of the Red Cross, International Law Concerning the Conduct of Hostilities 174 (1989); Convention on the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, adopted 1972, in force 26 March 1975, (General Assembly resolution 2826 (XXIX)). The Fourth Review Conference of States Parties (Geneva 1996) reviewed efforts to draft a verification protocol.

3/ See, for example, Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, in force 5 October 1978, United Nations Treaty Series; Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxic Weapons and on their Destruction, in force 26 March 1975, United Nations Treaty Series.

4/ General Assembly resolution 1653 (XVI).

5/ General Assembly resolution 2603 A and B (XXIV).

6/ Legality of the Threat or Use of Nuclear Weapons, 1996 International Court of Justice Reports (8 July 1996).

7/ See, Metal of Dishonor. Depleted Uranium. How the Pentagon Radiates Soldiers and Civilians with DU Weapons. Selections compiled and edited by the Depleted Uranium Education Project. International Action Centre, New York, 1997.

8/ Peterson, W.D., TERA Request for Amendment to License No. NM-INT-DU-07, New Mexico Institute of Mining and Technology, 17 November 1988.

9/ Information obtained from the U.S. Nuclear Weapons Cost Study Project of the Brookings Institute.

10/ The right to peace derives from the United Nations Charter, and is also viewed as an aspect of the right to life. See, e.g. B. Ramcharan, The Concept and Dimensions of the Right to Life in The Right to Life in International Law (B. Ramcharan, ed. 1985). The development of the right to the use of science and technology for the benefit of humankind dates from paragraph 18 of the Proclamation of Tehran (1968). In 1975, the General Assembly promulgated the Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind, General Assembly resolution 3384 (XXX) of 10 November 1975.

11/ Weaponry containing depleted uranium, developed by the United States is now being developed in the United Kingdom, the Russian Federation, Turkey, Saudi Arabia, Pakistan, Thailand, Israel and France. See, written statement of International Educational Development, Inc. (E/CN.4/1997/NGO/49, para. 8).

12/ Nuclear Tests (Austl. v. Fr.), 1973 International Court of Justice Pleadings (1 Nuclear Tests) 322 (12 July); Nuclear Tests (Austl. v. Fr.; N.Z. v. Fr.), 1974 International Court of Justice Reports 253, 457.

13/ The press communiqué was issued in response to a suspension of political rights arising out of the civil war in Guatemala.

14/ Corfu Channel (U.K. v. Alb., 1949 International Court of Justice Reports 4, 22.)

15/ For a review of the right to compensation in the human rights systems see T. Van Boven, Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms (E/CN.4/Sub.2/1993/8) (final report) and the earlier submissions: Second progress report (E/CN.4/Sub.2/1992/8) Progress report (E/CN.4/Sub.2/1991/7), and Preliminary report (E/CN.4/Sub.2/1990/10).

ANNEX

INFORMATION SHEET PROVIDED BY THE CENTRE FOR DISARMAMENT AFFAIRS

A. Treaties

Declaration of St. Petersbourg (banning certain projectiles)
Entered into force: 11 December 1868

Declaration (IV,3) concerning Expanding Bullets
Entered into force: 4 September 1900

Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare
Signed 1925, enters into force for each signatory as from the date of deposit of its ratification; accessions take effect on the date of the notification by the depositary Government
Total number of parties: 132

Treaty on the Non-Proliferation of Nuclear Weapons
Entered into force: 5 March 1970
Total number of parties: 186

Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction
Entered into force: 26 March 1975
Total number of parties: 140

Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects
Entered into force: 2 December 1983 (Protocols I, II and III)
Total number of parties: 66

Protocol I on Non-Detectable Fragments
Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996
Protocol III on Prohibitions or Restrictions on the Use of Incendiary Weapons
Protocol IV on Blinding Laser Weapons (concluded 1995)

Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction
To enter into force 29 April 1997
Total number of signatories: 163
Total number of ratifications: 74

Comprehensive Nuclear Test-Ban Treaty
Not yet in force
Total number of signatories: 143
Total number of ratifications: 2

B. Advisory Opinion of the International Court of Justice

Excerpt from document A/51/218: Note by the Secretary-General on the advisory opinion of the International Court of Justice on the legality of the threat or use of nuclear weapons.

"(2) Replies in the following manner to the question put by the General Assembly:

A. Unanimously,

There is in neither customary nor conventional international law any specific authorization of the threat or use of nuclear weapons;

B. By eleven votes to three,

There is in neither customary nor conventional international law any comprehensive and universal prohibition of the threat or use of nuclear weapons as such;

IN FAVOUR: President Bedjaoui; Vice-president Schwebel; Judges Oda, Guillaume, Ranjeva, Herezegh, Shi, Fleischhauer, Vereshchetin, Ferrari Bravo, Higgins;

AGAINST: Judges Shahabuddeen, Weeramantry, Koroma.

C. Unanimously,

A threat or use of force by means of nuclear weapons that is contrary to Article 2, paragraph 4, of the United Nations Charter and that fails to meet all the requirements of Article 51, is unlawful;

D. Unanimously,

A threat or use of nuclear weapons should also be compatible with the requirements of the international law applicable in armed conflict, particularly those of the principles and rules of international humanitarian law, as well as with specific obligations under treaties and other undertakings which expressly deal with nuclear weapons;

E. By seven votes to seven, by the President's casting vote,

It follows from the above-mentioned requirements that the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law;

However, in view of the current state of international law, and of the elements of fact at its disposal, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be

lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake;

IN FAVOUR: President Bebajoui; Judges Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Ferrari Bravo;

AGAINST: Vice-President Schwebel; Judges Oda, Guillaume, Shahabuddeen, Weeramantry, Koroma, Higgins.

F. Unanimously,

There exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control."

C. Reports

Reports of experts on investigations of cases of alleged use of chemical weapons: A/36/613, A/37/259, A/39/210, S/16433, S/17127, S/17911 and Corr.1 and Add.1-2 and S/18852 and Corr.1 and Add.1.

Guidelines and procedures for investigation of cases of alleged use: A/38/435, A/39/488, A/43/690 and Add.1 and A/44/561 and Add.1-3.

D. Studies

Study on the Climatic and other Global Effects of Nuclear War, A/43/351.
Nuclear Weapons: A Comprehensive Study, A/45/373.

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COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention
of Discrimination and
Protection of Minorities
Forty-ninth session
Item 11 (b) (ii) of the provisional agenda

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN OR MAY BE CONCERNED:

REVIEW OF ISSUES NOT PREVIOUSLY THE SUBJECT OF STUDIES BUT WHICH THE SUB-COMMISSION HAS DECIDED TO EXAMINE:

INTERNATIONAL PEACE AND SECURITY AS AN ESSENTIAL CONDITION FOR THE ENJOYMENT OF HUMAN RIGHTS, ABOVE ALL THE RIGHT TO LIFE

Report of the Secretary-General submitted pursuant to
Sub-Commission resolution 1996/16

Addendum

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GE.97-13071 (E)

Introduction

1. The present note contains additional replies received from Governments after the publication of the report by the Secretary-General on the subject (E/CN.4/Sub.2/1997/27).

2. As at 4 July 1997, such replies had been received from the Governments of Cuba, the Philippines and Trinidad and Tobago.

Cuba

[Original: Spanish]
[25 June 1997]

1. With regard to paragraph 2 of resolution 1996/16, the Government of Cuba believes it appropriate to point out the following criteria and considerations:

Nuclear weapons

2. In the Final Document of the first special session of the General Assembly devoted to disarmament and in numerous other United Nations documents, the international community has recognized that the very survival of humankind depends on the elimination of all nuclear weapons from the face of the earth. For Cuba, this continues to be of the highest priority in the multilateral disarmament process.

3. The uniqueness of nuclear weapons, including weapons of mass destruction, was clearly explained in the dissenting opinion of Judge Weeramantry, who referred to the damage caused by these weapons during consideration by the International Court of Justice of the legality of the threat or use of nuclear weapons (A/51/218 of 19 July 1996). The reasons cited in the opinion to demonstrate the unique character of nuclear weapons are as follows:

(a) Cause death and destruction;

(b) Induce cancers, leukaemia, keloids and related afflictions;

(c) Cause gastrointestinal, cardiovascular and related afflictions;

(d) Continue for decades after their use to induce the health-related problems mentioned above;

(e) Damage the environmental rights of future generations;

(f) Cause congenital deformities, mental retardation and genetic damage;

(g) Carry the potential to cause a nuclear winter;

(h) Contaminate and destroy the food chain;

(i) Imperil the ecosystem;

(j) Produce lethal levels of heat and blast;

(k) Produce radiation and radioactive fall-out;

(l) Produce a disruptive electromagnetic pulse;

(m) Produce social disintegration;

(n) Imperil all civilization;

(o) Threaten human survival;

(p) Wreak cultural devastation;

(q) Span a time range of thousands of years;

(r) Threaten all life on the planet;

(s) Irreversibly damage the rights of future generations;

(t) Exterminate civilian populations;

(u) Damage neighbouring States;

(v) Produce psychological stress and fear syndromes;

as no other weapons do.

4. For several years in succession the General Assembly of the United Nations has been adopting resolutions emphasizing the priority of nuclear disarmament and the need to begin multilateral negotiations to that end.

5. In the Conference on Disarmament, which is the only multilateral negotiating forum on disarmament, the "Group of 21" has insisted on the need for establishing an ad hoc committee on nuclear disarmament with a negotiating mandate. In August 1996, 28 delegations of the Conference on Disarmament, including Cuba, officially presented that body with a proposal for a Programme of Action for the Elimination of Nuclear Weapons. This proposal contains concrete measures grouped into three stages, which would make the elimination of nuclear weapons possible within just over 20 years. This proposal could serve as a basis for the work of the ad hoc committee of the Conference on Disarmament to deal with the topic.

Chemical and biological weapons

6. Considering the destructive potential of such weapons, their prohibition and total elimination must also constitute one of the priority objectives of

the international community. In order to guarantee that objective, Cuba believes it is vital to secure the effective implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (Chemical Weapons Convention), once it enters into force on 29 April 1997. That implementation will require:

(a) Securing the universal ratification of the Convention, including in particular by the chemical weapons-producing countries, as well as by those possessing the industrial capacity to produce them, without exception. The non-adherence by the two declared chemical weapons-producing States would dramatically alter the character of the Convention as an instrument of disarmament;

(b) As provided for by the Convention, once the period established for the destruction of chemical weapons has expired, no State party may be allowed to store such weapons;

(c) The application of measures aimed at restricting international trade in chemical substances, particularly those based on political considerations contrary to the letter and spirit of the Convention, should be abandoned.

7. With regard to biological weapons, Cuba believes that strict observance of the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction is fundamental for international peace and security. To increase the application and effectiveness of the Convention and strengthen its authority even further, it is important among other things to broaden international participation in confidence-building measures and the procedures for consultations agreed upon at the Second and Third Review Conferences of the Convention. Likewise, one of the major tasks now facing the States parties to the Convention must be the elaboration of an effective verification system for this legal instrument based on widely accepted principles of multilateral verification, including site inspections.

8. The reaffirmation contained in the Final Document of the Fourth Review Conference is of special importance to Cuba, in that the use by States parties, in any way and under any circumstances, of microbial or other biological agents or toxins that is not consistent with prophylactic, protective or other peaceful purposes, is effectively a violation of article I of the Convention.

9. In reference to the other types of weapons mentioned in paragraph 2 (a) of resolution 1996/16, the Cuban position takes very much into account the principle of international law according to which the right of the parties to an armed conflict to choose the methods or means of waging war is not limitless, nor is the principle prohibiting the use in armed conflicts of weapons, projectiles, materials and methods for waging war such as would

cause superfluous damage or unnecessary suffering. The greatest possible protection of the civilian population against the effects of hostilities must be a major objective, to be guaranteed at all times.

Conclusions

10. The elimination of nuclear and other weapons, although it would certainly have an undeniable importance, will not in and of itself resolve all the current threats to life, physical security and other human rights, which have their deepest roots in the structure of society and the current international order. It will require the organization of a new system of international security, based on demilitarization and the non-use or threat of force in international relations and on respect for the sovereignty and territorial integrity of States; a system in which aggression and war are banished, so that we may all live together in peace, as good neighbours.

11. As Mr. M. Dubey, former Foreign Secretary of India, wrote ("The Only Alternative is the Elimination of Nuclear Weapons", Disarmament, vol. XVII, No. 2/1994), a new security system should be genuinely multilateral, at both the regional and global levels, and the United Nations should be the centrepiece of that architecture. Such a system should also be capable of dealing with both military and non-military aspects of security, including the establishment of an equitable and just international economic order.

Philippines

[Original: English]
[4 June 1997]

1. The Philippines has always been supportive, in the recognition of international peace and security, to realize the full potentials of humankind, regardless of colour, age, gender, creed and religion, through the full protection of the law. These principles are translated in the ideals and aspirations of the people found in the preamble to the Philippine Constitution:

> "We, the sovereign Filipino people, imploring the aid of Almighty God, in order to build a just and humane society and establish a Government that shall embody our ideals, and aspirations, promote the common good, conserve and develop our patrimony and secure to ourselves and our posterity the blessings of independence and democracy under the rule of law and a regime of truth, justice, freedom, love, equality, and peace, do ordain and promulgate this Constitution."

2. However, these aspirations and ideals need to be protected by laws the most fundamental of which is the right to life. Article III, section 1, of the Philippine Bill of Rights states:

> "No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of laws."

3. In war and armed conflict the State is ready to protect such rights as provided for in article II, section 2, of which states:

> "The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity of all nations."

4. This position is further translated in international affairs as the Philippine Government adheres to the international humanitarian law of protecting the right to life and recognizing an international law and order to fully realize all human aspirations and ideals. The Philippines is a party to the International Bill of Human Rights to promote and encourage respect for human rights and to affirm the Philippines' faith in the principles of the International Bill of Human Rights and other relevant international instruments. To date, the Philippines is a State party to instruments of the non-proliferation regime to promote international peace and security, namely: the Nuclear Non-Proliferation Treaty (NPT); the Chemical Weapons Convention; the Inhumane Weapons Convention; and the yet to be ratified comprehensive test-ban treaty.

5. The Philippines adheres likewise to the State's declaration against nuclear weapons as stated in article II, section 8, of the Constitution: "The Philippines, consistent with the national interest, adopts and pursues a policy of freedom from nuclear weapons in its territory."

6. The cold war era saw the predominance of a strategic defence initiative policy between superpowers, the United States and the former Soviet Union, wherein nuclear deterrence translated into an arms race. It has not been too long since the two superpowers realized the inefficacy of a "minimum deterrence" presupposing an acceptance of nuclear biological and chemical weapons and the possibility of mutual annihilation. It did not take too long before the United States and the former Soviet Union realized the inefficacy of such a defence policy, not so much out of fear of each other's arms supremacy but out of fear created by the existence of "nuclear States" and, subsequently, a real threat of a nuclear war.

7. A nuclear war never occurred, but the events in Nagasaki and Hiroshima need not be duplicated to convince us how large and complex the cost to humankind in terms of life and property a nuclear holocaust would be. In the Lao People's Democratic Republic and Cambodia, the consequential and cumulative effects of a nucealr war cannot be ignored relative to damage to life, property, and the human rights to peace and physical security.

8. Thus, in the post-cold war era, the strategic defence initiative or "minimum deterrence" approach has been replaced by alternatives, looking at security in a comprehensive sense. Security depends on a collective security such that the security of one means the security of the other. This paved the way to military and non-military approaches to security: peace and security seen not only from a military standpoint but also from that of various disciplines, i.e. technological, legal, economic, political, psychological, religious and environmental.

9. With the foregoing perspective, the Philippines adheres to peaceful, non-military approaches to conflict and renounces the use of nuclear and chemical weapons, fuel-air bombs, napalm, cluster bombs and biological weaponry containing depleted uranium.

Trinidad and Tobago

[Original: English]
[13 June 1997]

1. The Ministry of National Security supports Sub-Commission resolution 1996/16 on "International peace and security as an essential condition for the enjoyment of human rights, above all the right to life."

2. The Trinidad and Tobago Defence Force is not in possession of any weapons of aerial delivery or nuclear, chemical or biological weaponry, nor does it intend to acquire weapons of mass destruction in the future. Additionally, the Trinidad and Tobago Defence Force has not detected the use of these weapons in or near to the sovereign territory of Trinidad and Tobago.

3. The Ministry also supports the recommendation that any nation in possession of weapons of aerial delivery or nuclear, chemical or biological weaponry should be encouraged to dispose of them in the interest of all humanity as they constitute a serious danger to our planet.